



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,950	09/29/2003	Anthony Robert Knoerzer	CFLAY.00146	5271

22858 7590 07/12/2005

CARSTENS YEE & CAHOON, LLP  
P O BOX 802334  
DALLAS, TX 75380

EXAMINER
----------

KRUER, KEVIN R

ART UNIT	PAPER NUMBER
----------	--------------

1773

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/674,950

Applicant(s)

KNOERZER ET AL.

Examiner

Kevin R Kruer

Art Unit

1773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 7-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-6, drawn to a food package, classified in class 428, subclass 500+.
  - II. Claims 7-10, drawn to a method of making an oriented thin film, classified in class 427, subclass 299+.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the process could be used to make a materially different product. For example, the process could be utilized to make a film wherein the polymer was a thermoplastic other than PP, PET, metallized PP, or metallized PET.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Colin Cahoon on Wednesday June 15, 2005 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-6. Affirmation of this election must be made by applicant in replying to this

Office action. Claims 7-10 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Drawings***

6. The drawings filed 9/29/2003 are accepted.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Kurokawa et al (US 5,698,317).

Kurokawa teaches a polyolefin-based laminate film including at least 4 layers, wherein one layer is a polyolefin-based mixed resin layer. The mixed resin layer comprises a terpene resin in amounts of 5-20wt% (abstract). A metal layer is deposited on said mixed resin layer (abstract). Said laminate may be oriented (col 5, lines 45+).

Art Unit: 1773

The terpene may comprise pinene, dipentene, limonene, mirene, or camphorene or myrcene (col 3, lines 23+).

The mixed resin layer is herein understood to read on the claimed oriented polypropylene layer. The metallized mixed resin layer is herein understood to read on the claimed metallized propylene layer.

With regard to claim 3, applicant's attention is directed to Figure 1 wherein the metallized polypropylene is understood to read on the first layer.

With regard to claim 4, Applicant's attention is directed to Figure 1 wherein the metallized layer is understood to be the first layer and the mixed resin layer is understood to be the claimed "second layer."

With regard to claim 5, Applicant's attention is directed to figure 1, wherein the mixed resin layer is herein understood to read on the claimed "third layer" when heat seal layer (5) is the first layer.

With regard to claim 6, Applicant's attention is directed to figure 2, wherein the mixed resin layer (12) is herein understood to read on the claimed fourth layer when the heat seal layer (15) is understood to be the first layer.

9. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Heffelfinger et al (US 5,500,282).

Art Unit: 1773

Heffelfinger teaches an oriented film structure of improved water vapor transmission rate prepared from a mixture of polypropylene and terpene. The terpene may comprise pinene, limonene, dipentene, and the like (col 3, lines 23+). The film is utilized in multi-layer films such as ABA structures wherein B is the propylene layer (col 4, lines 12+). In such an embodiment, the propylene layer is understood to read on the second layer of claim 4. The laminate may further comprise a metal layer, a PVDC layer, an oriented PP layer, and an optional second PVDC layer (see US 5,019,447; incorporated by reference). Said embodiment is understood to read on the laminates of claim 3(PP/PVDC/metal) and claim 5 (metal/PVDC/PP, PVDC).

### Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin R Kruer whose telephone number is 571-272-1510. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on 571-272-1284. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1773

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "K-R Kruer", with a horizontal line extending from the end.

Kevin R. Kruer  
Patent Examiner-Art Unit 1773